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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/759,788

01/16/2004

Thomas T. Yamashita

YAMA-009

8159

24353 7590 07/13/2010
BOZICEVIC, FIELD & FRANCIS LLP
1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO, CA 94303

EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

07/13/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/759,788	Applicant(s) YAMASHITA, THOMAS T.	
	Examiner NEIL LEVY	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7,8, 10, 11, 13, 14, 16-20,30,31, 41-44, 46 - 60 is/are pending in the application.
- 4a) Of the above claim(s) 30,31 and 59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7,8, 10, 11, 13, 14, 16-20, 41-44, 46 - 57,58,60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) 1,3-5,7,8, 10, 11, 13, 14, 16-20,30,31, 41-44, 46 - 60 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 30,31& 59 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species , there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/23/06.

59 has non-elected complexing agents.

Claim Rejections - 35 USC § 112

Claim 41-44, 46-56, 58, and 60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 41 and 54 are at (a) in closed language, but then (b) opens to include anything else. It is unclear what the metes and bounds are. Further, (a) is a pesticide, but claim 43 is to >1 pesticides; again outside the “consisting of” format. The same is true of (i) thru (v). dependent claims carry the fault of independent 41 and 54.

At claim 58; *GREENTHUMB* is a trade name, and should be specifically identified to permit the artisan to obtain the components, even if the trade name is used for some other products.

Claims 58 and 60 are indefinite as the phytotoxicity reduction is shown as (i) thru (iv) and (i) thru (v) respectively; now it is due partly (58) and solely (60) to *GREENTHUMB*.

No allowance is possible until the *GREENTHUMB* is properly identified and claimed. The locations examiner is directed to (page 35-41 and 20) are not evident as identifying *GREENTHUMB* 1-0-2. Competent material identification of the product is required.

Claim Rejections - 35 USC § 103

ClaimS 1,3-5,7,8, 10, 11, 13, 14, 16-20, 41-44, 46 - 57 stand rejected under 35 U.S.C. 103(a) as being unpatentable over HARMON 3558787 and KLOPPING -- 3789122 in view of BEATY -5634959 as explained by evidence of BATH-6083293. These claims have been previously rejected. The amendment to closed language fails. Thus, again, the claims stand rejected.

ClaimS 1,3-5,7,8 10, 11, 13, 14, 16-20, 38 and 39 rejected under 35 U.S.C. 103(a) as being unpatentable over HARMON 3558787 or KLOPPING --3789122 in view of BATH-6083293. These claims have been previously rejected. Thus, again, the claims stand rejected.

Response to Arguments

Applicant's arguments filed 4/30/2010 have been fully considered but they are not persuasive.

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Applicant's arguments are directed to amended claims , but fail to the extent attempted closed language fails, and *GREENTHUMB* is not evident to examiner as identified. We note that the carbon skeleton energy source elected as sucrose, and claimed as corn syrup is identified as the required phytotoxicity reducing component.

Applicant is arguing for the functions and intended use of the claimed composition.

Examiner is accused of hindsight and not crediting applicant's experimental results as surprising.

Applicant charges the office must set forth evidence that the results, as examiner understands the charges, are not unobvious. The patent office has not the ability to provide testing.

Examiner position is not that the prior art is directed at methods to reduce pesticide induced toxicity, but that one in the art would optimize or maximize the growing of crops and resulting production. Such effort is seen as utilizing art known practices and ingredients. To that end, the agronomist or horticulturist would utilize ingredients, inclusive of pesticides as needed to control pests, minerals, and other nutrient materials to aid in and maximize growth, and the additional components required to optimize ingredient compatibility and application technique. The instant claims are sufficiently generic in scope to encompass that which is done to provide beneficial crop production compositions.

Claim to specific pesticides and *GREENTHUMB* and other components and concentrations would warrant reconsideration. We note that only 0.01% of pesticide (a) and of (b), a total of 0.8%; only 0.1% (i) up to 0.5% (ii) up to 0.1% (iii) and up to 0.1% (iv) are required-thus is less than 1% of the total composition. What is the 99+%?

A maximum of 15% (a) and 20% (i), a 0.5% (ii), 0.1% (iii), 0.1% (iv), 30% (v) and indeterminate amount of (vi) and *GREENTHUMB* (0.1% each?) permit of more than 66% of the composition-what else is present?

In consideration of the open question and in attempt to move what examiner considers from a toxicological perspective, a valuable contribution, this action is not final.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT A. WAX can be reached on 571-272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/

Primary Examiner, Art Unit 1615 7/10/2010